IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1969

NO. 954

JOHN A. HUTTER, et al,

Petitioners

vs.

CITY OF CHICAGO,
A Municipal Corporation

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT

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PETITIONERS REPLY BRIEF FOR RESPONDENTS IN OPPOSITION

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REASONS FOR ALLOWING THE WRIT

Respondents do not deny claims of petitioners are right and call for justice. Respondent, like the Circuit Court, the Appellate Court, and the

Illinois Supreme Court refuse to address itself to the question: "If an apartment which meets all the requirements of the Chicago Municipal Code provision 67-4(e), "In Multiple dwellings, one exit door shall be permitted to a public corridor from a dwelling unit having not more than five habitable rooms and having an area not exceeding 1,000 square feet" may be excluded from the above provision for the reason that it has more than one level. Without comsidering this basic question, how could there possibly be due process as requested by Amendment 14?

In Abstract of Record, on page 25 John Hutter testified: "the single means of ingress and egress to the third floor corridor meet all Code requirements." The only witness presented by the City testified: "The major complaint is the egress problem on the top floor. There are a few items that have been complied with. Each apartment has a means of egress to the third floor."

At this time the only question before the Honorable Judge Frank H. Machala on the February 27, 1968 trial was "should these apartments be excluded from 67.4(e) because they contained more than one level." The court refused to rule on this question.

This trial at this time, was complete in every respect. The court should have issued his judgment. Instead he put defendants under double jeopardy by requiring another trial on the identical subject matter.

In the second or repeat trial before the Honorable Alvin J. Kvistad on

May 27, 1968. In Abstract of Record on page 29, petitioner testified: "The Defendants' contention is that if these apartments had the doors, entrances, egress and ingress on the third floor corridor, that is all that the building code requires."

On page 30: "Now if we seal up every other exit to all these so called penthouse apartments, if you seal up every exit except this one, we are still in full compliance with code."

This second court also ignored this presented question.

Petitioners raised this same question in its appeal to the Appellate Court, page 13 of Brief; respondents brief confirmed on page 12; also in their reply brief pages 2, 3, 4, petitioners state, with reference to 67-4(e), "This provision does not say that units cannot be bi-level, have stairways, furnished landings, locked doors, etc. Plaintiffs want to read this into the law which they should not be permitted to do."

In their Petition For Rehearing, on page 2 again with reference to 67-4(e) "The above section 67-4 is very clear and specific. There are no "ifs", "ands" or "buts" exceptions or modifying factors whatsoever.

"The trial court and this Appellate Court mistakenly attempts to read into Section 67-4 modification which do not exist."

"They are in effect saying that for an apartment to come within the

provisions of Section 67-4 it must be entirely on one floor or level."

"There is nothing in 67-4 that states a qualifying apartment must have a specific arrangement or rooms or levels."

In their petition for leave to appeal to the Illinois Supreme Court petitioners state on page 2 "Both Circuit and Appellate Courts are attempting to usurp the legislative power of the City Council when they attempt to modify the clear provisions of 67-4(e) by holding that the provisions should read "excluding apartments of more than one level."

None of these tribunals have answered this question. They simply ignore it and order petitioners deprived of the use of part of their real property contrary to law applicable and in direct violation of Amendment 14.

Respondents likewise (as was true of all State Courts) refuse to reply to question presented with reference to double jeopardy and the conduct of trial court which petitioners claim violates articles and amendments of the U.S. Constitution. The trial court could have fined or jailed petitioners. An official of respondent, stated in the press that a landlord could get six months in jail for not providing enough heat if his furnace broke down.

Thus the question of double jeopardy and due process was also ignored by respondent in its brief in opposition. The respondent claims that no substantial federal question is present and no constitutional issue was properly preserved for

review. Respondent states, "The first time the subject of deprivation of Constitutional rights under the 14th amendment was even mentioned by the petitioners was in the Petition For Leave To Appeal to the Supreme Court of Illinois." This statement does not conform to the facts.

At all times the Circuit Court in both trials refused to discuss petitioners claim that requirements of 67-4(e) were met, and suddenly called trial at an end and issued order. Petitioner had no time to raise constitutional question other than court was bound to follow the law 67-4(e) which it refused to do.

In petitioners brief and argument to the Appellate Court, petitioners again raised above point, also the following:

Previous to first trial and at first trial the sole witness for City, Lt. Roloff had in his possession correspondence tending to prove city had followed the law and approved apartments in question. In answer to Subpoena Duces Tecum on March 10, 1968, witnesses testified they had disappeared (page 9, 10, 11). This was a direct effort to conceal evidence.

On page 6 and 7 of their reply brief petitioners raised the question of lack of due process in the conduct of both Circuit Court trials.

On page 3 of petitioners Petition for Rehearing, they state "Courts must not be permitted to legislate and change a Municipal Code provision by judicial procedure. Judges, like everyone else should abide by and obey the law."

"The misinterpretation of 67-4 of the Municipal Code of Chicago, denies the defendants due process as provided by Amendment 14 of the U.S. Constitution because it deprives defendants of their property and income unlawfully."

"The action and decisions of the Trial and Appellate Courts clearly deprive the defendants of their property unlawfully without due process and in violation of Amendment 14 of the U.S. Constitution."

"Likewise were the infractions of due process perpetrated against the defendants as outlined in defendants brief including doubtful Service."

These same points were again raised by petitioners on page 5 of their petition for Leave to Appeal to the Supreme Court of Illinois.

In conclusion it appears to petitioners that respondent in no way responded to petitioners brief. It ignored both of the questions presented by petitioners on page 3 of their petition for writ.

Instead, the respondent misstated the facts on page 3 and on page 4 they quoted a portion of Appellate Court's decision which has no bearing on questions raised (see page 8 of petitioners petition for writ.

Conclusion

Petitioners pray that this court grant justice for the foregoing reasons it is respectfully submitted

that the petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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January 26, 1970